Mr. Grenon's legendary RRSP and its implications for Registered Plan Trustees

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On July 4, 2025, the Federal Court of Appeal (the Court) released its long-awaited decision in *The RRSP of James T. Grenon by its trustee CIBC Trust Corporation v. His Majesty the King* (*Grenon*). *Grenon* is the first court decision to consider the requirements of the mutual fund trust definition in the *Income Tax Act* (ITA) and its associated requirements in the *Income Tax Regulations* (ITR) and, as such, has significant implications for trustees of registered plans[1] and their administrative agents. The decision also has implications for mutual fund manufacturers which are discussed in a separate BLG bulletin.

Grenon focused on whether certain trust fund units held in Mr. Grenon's RRSP (Grenon RRSP) were qualified investments for registered plans.

Overview – Taxation of registered plan trusts holding non-qualified investments

Most registered plans are structured as trust arrangements whereby the plan holder is the beneficiary and a licensed trust company is the trustee.

A trust governed by a registered plan (Registered Plan Trust) must only invest in properties that are "qualified investments" within the meaning of the ITA and the ITR. Failure to abide by this investment restriction will result in adverse tax consequences for both the Registered Plan Trust and the plan holder. If a Registered Plan Trust holds a non-qualified investment, then:

- The Registered Plan Trust has a tax liability under Part I of the ITA for any income and capital gains resulting from the non-qualified investment; and
- The "controlling individual" of the Registered Plan Trust is subject to a tax under Part XI.01 of the ITA. The tax is equal to 50 per cent of the fair market value of the non-qualified investment.[2]

Facts in *Grenon*

The Grenon RRSP was invested in units of certain trust funds (each referred to as a Grenon Fund) that the plan holder, Mr. Grenon, was the promoter of. The intention was for the Grenon Funds to be mutual fund trusts, so that units of the Grenon Funds were qualified investments for Registered Plan Trusts.

The Court found that the Grenon Funds were not mutual fund trusts, and consequently, the units of the Grenon Funds which were held in the Grenon RRSP were non-qualified investments. As a result, the Grenon RRSP was liable for Part I tax on any income and capital gains resulting from the non-qualified investments. Further, the Grenon RRSP may have also been liable for a 1 per cent per month penalty tax that was previously enacted under Part XI.1 of the ITA (which tax has since been replaced with a different penalty tax regime imposed on the controlling individual, as opposed to the Registered Plan Trust, in Part XI.01 of the ITA).

Learnings from *Grenon*

Trustee filing obligations

The trustee of a Registered Plan Trust has various tax filing obligations under different parts of the ITA. The Court looked at the difference between the following returns:

- *T3GR Group Income Tax and Information Return for RRSP, RRIF, RESP, or RDSP Trusts* (T3GR) – This is the prescribed return for purposes of Part XI.1 of the ITA.[3]
- *T3 Trust Income Tax and Information Return* (the T3 Return) – This is the prescribed return for purposes of Part I of the ITA which must be filed if the Registered Plan Trust has a Part I tax liability.[4]

The T3GR requires trustees to report certain information, on an aggregate basis, for a group of RRSPs, RRIFs, RESPs, or RDSPs governed by a particular specimen plan. In addition to reporting the Part XI.1 tax liability, the T3GR also requires the trustee to provide certain information about the Registered Plan Trusts under its governing specimen plan.

Part I Tax Liability of Registered Plan Trust – Statute barring

The Canada Revenue Agency (CRA) may reassess a taxpayer at anytime for taxes for a particular taxation year. However, the CRA cannot reassess a taxpayer after the "normal reassessment period" for the taxation year, absent an applicable exception (such as if a tax return includes a misrepresentation attributable to neglect, carelessness or wilful default).[5]

The normal reassessment period in respect of a taxation year for a Registered Plan Trust is the period that ends three years after the earlier of (i) the day the CRA sends a notice of an original assessment to the Registered Plan Trust for taxes for the year (Notice of Assessment) and (ii) the day the CRA sends an original notification to the Registered Plan Trust that no tax is payable for the year (Notice of Nil Tax).[6]

The trustee of the Grenon RRSP argued that the Part I assessments were statute-barred because the T3GR return had been filed and the Notice of Nil Tax sent to the

trustee constituted a notice that no tax was payable for both Part I and Part XI.1. However, the Court concluded that the Part I assessments were not statute-barred because no Part I return had been filed. Under Part I of the ITA, each taxpayer is required to file a return of income in prescribed form, which for a trust's Part I tax liability is the T3 Return. Registered Plan Trusts that do not have taxes payable under Part I of the ITA for a taxation year do not have to file a T3 Return, but they may still file a nil T3 Return in those circumstances.[7]

In the absence of filing a T3 Return, the Court found that the normal reassessment period of 3 years had not begun for any Part I liability. Since the T3GR and T3 Return are the prescribed returns for taxes arising under different parts of the ITA, any resulting Notice of Assessment or Notice of Nil Tax issued by the CRA upon filing a return will only assess the taxes under the applicable Part.

Obligation on CRA to assess in accordance with ITA

As units of the Grenon Funds were non-qualified investments at the time of their acquisition by the Grenon RRSP, Mr. Grenon should have included their value in his income at that time pursuant to subsection 146(10) of the ITA, as it then read. There is no Part XI.1 tax on the Registered Plan Trust where there is an income inclusion under subsection 146(10).

The CRA had, however, assessed the Grenon RRSP under Part XI.1 because Mr. Grenon had not reported the Part I income inclusion as required. The Court clarified that it was not generally open to the CRA to choose whether to assess the plan holder (for failing to report under subsection 146(10)) or the Registered Plan Trust (under Part XI.1). The Court confirmed that if a Registered Plan Trust acquires a non-qualified investment, the ITA mandates that the plan holder report the income inclusion under subsection 146(10) if the plan holder is resident in Canada. As a result, Part XI.1 tax is not applicable (even if, as was the case in *Grenon*, the plan holder did not actually report the income). As such, the CRA would be required to assess the plan holder in this situation and could not elect to assess the Registered Plan Trust instead.

Due diligence efforts of the trustee

In *Grenon*, counsel for the Grenon RRSP's trustee argued that the trustee conducted sufficient due diligence in confirming the status of the Grenon Funds as "mutual fund trusts" for tax purposes when determining whether units of the Grenon Funds were qualified investments. In particular, the trustee of the Grenon RRSP had obtained the customary legal opinion from a reputable law firm regarding the mutual fund trust status of each Grenon Fund.

The Court agreed with the Tax Court's view that a trustee of a Registered Plan Trust was not exercising due diligence when relying on legal opinions where key legal issues were assumed away. In particular, the legal opinion in respect of the mutual fund trust status of the Grenon Funds relied on a certificate from Mr. Grenon, as to each Grenon Fund meeting certain legal requirements in order to be a mutual fund trust. As the legal opinions expressed no view on whether the Grenon Fund had completed a lawful distribution to the public (which is a key legal requirement for a trust fund to be a mutual fund trust), the legal opinions did not address a fundamental issue underpinning whether the units of each Grenon Fund were, in fact, qualified investments.

Key takeaways for registered plan trustees and their administrative agents

- **Due diligence regarding qualified investment status of an investment** – Trustees and their administrative agents often rely on legal opinions in establishing the qualified investment status of an investment. To the extent these opinions rely on assumptions which later prove to be incorrect, the Trustee may have limited protection. This may impact the cost of obtaining legal opinions and the willingness of trustees to accept certain types of investments.
- **Updating compliance practices regarding nil T3 Returns** – The current industry practice of not filing a nil T3 Return for each Registered Plan Trust means that the CRA may reassess the Registered Plan Trust for Part I taxes at any time. If the T3 Return is filed for each taxation year of a Registered Plan, this effectively means the CRA is limited to reassessing the Registered Plan Trust's three most recent taxation years absent an exceptional circumstance (such as if the T3 Return includes a misrepresentation attributable to neglect, carelessness or wilful default). As such, trustees may wish to consider filing T3 Returns for "high risk" Registered Plan Trusts.
- **Indemnity Arrangements.** The Part I tax applies to the Registered Plan Trust, which, in CRA's view, can potentially extend to the trustee where assets of the Registered Plan Trust are insufficient. As such, trustees of Registered Plan Trusts should review and ensure they have appropriate indemnities in place from the plan holder and from their administrative agents (as appropriate). Alternatively, to avoid Part I tax liability, the trustee could consider applying for a clearance certificate pursuant to subsection 159(2) of the ITA before making any distributions from the registered plan.
- **Representation to Department of Finance.** *Grenon* may have wide ranging implications for the trusteed registered plan industry, given the potential for liability on trustees and their administrative agents (which is not generally present for registered plans provided by insurance carriers or depositaries). The industry may wish to consider whether to approach both the Department of Finance and the CRA as to the implications of:
    - Trustees filing large numbers of nil T3 Returns for their Registered Plan Trusts; and
    - Trustees requesting large numbers of clearance certificates before distributing from Registered Plan Trusts.

If you have any questions regarding the impact of *Grenon* on your obligations and liabilities as the trustee of a Registered Plan Trust (or as the administrative agent of the trustee), please contact Grace Pereira, Pamela Cross and Tony Zhang.

Footnotes

[1] A reference to a "registered plan" in this bulletin refers to the following: a registered retirement savings plan (RRSP); a registered retirement income fund (RRIF); a tax-free savings account (TFSA); a registered education savings plan (RESP); a registered disability savings plan (RDSP); and a tax-free first home savings account (FHSA).

[2] ITA s. 207.04. The existing tax under Part XI.01 of the ITA replaces the former tax under Part XI.1 of the ITA that was at issue in *Grenon*.

[3] ITA s. 207.2(1).

[4] ITA s. 150(1)(c).

[5] ITA s. 152(4).

[6] ITA s. 152(3.1)(b).

[7] ITA ss. 150(1.2)(n), 150(1.1)(b).

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